

1 **WORKERS' COMPENSATION AND DIRECTORS OR**
2 **OFFICERS**

3 2013 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Evan J. Vickers**

6 House Sponsor: Bradley G. Last

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Workers' Compensation Act to address excluding directors or
11 officers of corporations from coverage as employees.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ provides that if a corporation does not have an insurance carrier, it can notify the
- 15 commission that it elects to exclude certain directors and officers from coverage
- 16 under workers' compensation as employees;
- 17 ▶ grants rulemaking authority; and
- 18 ▶ makes technical changes.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **34A-2-104**, as last amended by Laws of Utah 2012, Chapters 346 and 363

27 *Be it enacted by the Legislature of the state of Utah:*

28 Section 1. Section **34A-2-104** is amended to read:

29 **34A-2-104. "Employee," "worker," and "operative" defined -- Specific**

30 **circumstances -- Exemptions.**

31 (1) As used in this chapter and Chapter 3, Utah Occupational Disease Act, "employee,"
32 "worker," and "operative" mean:

33 (a) (i) an elective or appointive officer and any other person:

34 (A) in the service of:

35 (I) the state;

36 (II) a county, city, or town within the state; or

37 (III) a school district within the state;

38 (B) serving the state, or any county, city, town, or school district under:

39 (I) an election;

40 (II) appointment; or

41 (III) any contract of hire, express or implied, written or oral; and

42 (ii) including:

43 (A) an officer or employee of the state institutions of learning; and

44 (B) a member of the National Guard while on state active duty; and

45 (b) a person in the service of any employer, as defined in Section 34A-2-103, who
46 employs one or more workers or operatives regularly in the same business, or in or about the
47 same establishment:

48 (i) under any contract of hire:

49 (A) express or implied; and

50 (B) oral or written;

51 (ii) including aliens and minors, whether legally or illegally working for hire; and

52 (iii) not including any person whose employment:

53 (A) is casual; and

54 (B) not in the usual course of the trade, business, or occupation of the employee's
55 employer.

56 (2) (a) Unless a lessee provides coverage as an employer under this chapter and
57 Chapter 3, Utah Occupational Disease Act, any lessee in mines or of mining property and each

58 employee and sublessee of the lessee shall be:

59 (i) covered for compensation by the lessor under this chapter and Chapter 3, Utah
60 Occupational Disease Act;

61 (ii) subject to this chapter and Chapter 3, Utah Occupational Disease Act; and

62 (iii) entitled to the benefits of this chapter and Chapter 3, Utah Occupational Disease
63 Act, to the same extent as if the lessee, employee, or sublessee were employees of the lessor
64 drawing the wages paid employees for substantially similar work.

65 (b) The lessor may deduct from the proceeds of ores mined by the lessees an amount
66 equal to the insurance premium for that type of work.

67 (3) (a) A partnership or sole proprietorship may elect to include any partner of the
68 partnership or owner of the sole proprietorship as an employee of the partnership or sole
69 proprietorship under this chapter and Chapter 3, Utah Occupational Disease Act.

70 (b) If a partnership or sole proprietorship makes an election under Subsection (3)(a),
71 the partnership or sole proprietorship shall serve written notice upon its insurance carrier
72 naming the persons to be covered.

73 (c) A partner of a partnership or owner of a sole proprietorship may not be considered
74 an employee of the partner's partnership or the owner's sole proprietorship under this chapter or
75 Chapter 3, Utah Occupational Disease Act, until the notice described in Subsection (3)(b) is
76 given.

77 (d) For premium rate making, the insurance carrier shall assume the salary or wage of
78 the partner or sole proprietor electing coverage under Subsection (3)(a) to be 100% of the
79 state's average weekly wage.

80 (4) (a) A corporation may elect not to include any director or officer of the corporation
81 as an employee under this chapter and Chapter 3, Utah Occupational Disease Act.

82 (b) If a corporation makes an election under Subsection (4)(a), the corporation shall
83 serve written notice naming the individuals who are directors or officers to be excluded from
84 coverage:

85 (i) upon its insurance carrier [~~naming the persons to be excluded from coverage.~~], if

86 any; or

87 (ii) upon the commission if the corporation is self-insured or has no employee other
88 than the one or more directors or officers being excluded.

89 (c) A corporation may exclude no more than five individuals who are directors or
90 officers under Subsection (4)(b)(ii).

91 (d) An exclusion under this Subsection (4) is subject to Subsection 34A-2-103(7)(d).

92 [~~☞~~] (e) A director or officer of a corporation is considered an employee under this
93 chapter and Chapter 3, Utah Occupational Disease Act, until the notice described in Subsection
94 (4)(b) is given.

95 (f) The commission may make rules, in accordance with Title 63G, Chapter 3, Utah
96 Administrative Rulemaking Act, regarding the form of the notice described in Subsection
97 (4)(b)(ii), including a requirement to provide documentation, if any.

98 (5) As used in this chapter and Chapter 3, Utah Occupational Disease Act, "employee,"
99 "worker," and "operative" do not include:

100 (a) a sales agent or associate broker, as defined in Section 61-2f-102, who performs
101 services in that capacity for a principal broker if:

102 (i) substantially all of the sales agent's or associate broker's income for services is from
103 real estate commissions; and

104 (ii) the sales agent's or associate broker's services are performed under a written
105 contract that provides that:

106 (A) the real estate agent is an independent contractor; and

107 (B) the sales agent or associate broker is not to be treated as an employee for federal
108 income tax purposes;

109 (b) an offender performing labor under Section 64-13-16 or 64-13-19, except as
110 required by federal statute or regulation;

111 (c) an individual who for an insurance producer, as defined in Section 31A-1-301,
112 solicits, negotiates, places, or procures insurance if:

113 (i) substantially all of the individual's income from those services is from insurance

114 commissions; and

115 (ii) the services of the individual are performed under a written contract that states that

116 the individual:

117 (A) is an independent contractor;

118 (B) is not to be treated as an employee for federal income tax purposes; and

119 (C) can derive income from more than one insurance company;

120 (d) notwithstanding Subsection 34A-2-103(4), an individual who provides domestic

121 work for a person if:

122 (i) the person for whom the domestic work is being provided receives or is eligible to

123 receive the domestic work under a state or federal program designed to pay the costs of

124 domestic work to prevent the person from being placed in:

125 (A) an institution; or

126 (B) a more restrictive placement than where that person resides at the time the person

127 receives the domestic work;

128 (ii) the individual is paid by a person designated by the Secretary of the Treasury in

129 accordance with Section 3504, Internal Revenue Code, as a fiduciary, agent, or other person

130 that has the control, receipt, custody, or disposal of, or pays the wages of the individual; and

131 (iii) the domestic work is performed under a written contract that notifies the

132 individual that the individual is not an employee under this chapter or Chapter 3, Utah

133 Occupational Disease Act; or

134 (e) subject to Subsections (6), (7), and (8), an individual who:

135 (i) (A) owns a motor vehicle; or

136 (B) leases a motor vehicle to a motor carrier;

137 (ii) personally operates the motor vehicle described in Subsection (5)(e)(i);

138 (iii) operates the motor vehicle described in Subsection (5)(e)(i) under a written

139 agreement with the motor carrier that states that the individual operates the motor vehicle as an

140 independent contractor; and

141 (iv) (A) provides to the motor carrier at the time the written agreement described in

142 Subsection (5)(e)(iii) is executed or as soon after the execution as provided by the commission,
143 a copy of a workers' compensation coverage waiver issued pursuant to Part 10, Workers'
144 Compensation Coverage Waivers Act, to the individual; and

145 (B) provides to the motor carrier at the time the written agreement described in
146 Subsection (5)(e)(iii) is executed or as soon after the execution as provided by an insurer, proof
147 that the individual is covered by occupational accident related insurance with the coverage and
148 benefit limits listed in Subsection (7)(c).

149 (6) An individual described in Subsection (5)(d) or (e) may become an employee under
150 this chapter and Chapter 3, Utah Occupational Disease Act, if the employer of the individual
151 complies with:

152 (a) this chapter and Chapter 3, Utah Occupational Disease Act; and

153 (b) commission rules.

154 (7) For purposes of Subsection (5)(e):

155 (a) "Motor carrier" means a person engaged in the business of transporting freight,
156 merchandise, or other property by a commercial vehicle on a highway within this state.

157 (b) "Motor vehicle" means a self-propelled vehicle intended primarily for use and
158 operation on the highways, including a trailer or semitrailer designed for use with another
159 motorized vehicle.

160 (c) "Occupational accident related insurance" means insurance that provides the
161 following coverage at a minimum aggregate policy limit of \$1,000,000 for all benefits paid,
162 including medical expense benefits, for an injury sustained in the course of working under a
163 written agreement described in Subsection (5)(e)(iii):

164 (i) disability benefits;

165 (ii) death benefits; and

166 (iii) medical expense benefits, which include:

167 (A) hospital coverage;

168 (B) surgical coverage;

169 (C) prescription drug coverage; and

170 (D) dental coverage.

171 (8) For an individual described in Subsection (5)(e), the commission shall verify the
172 existence of occupational accident insurance coverage with the coverage and benefit limits
173 listed in Subsection (7)(c) before the commission may issue a workers' compensation coverage
174 waiver to the individual pursuant to Part 10, Workers' Compensation Coverage Waivers Act.